

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DAVID LANE JOHNSON,	:	Case No. 5:17-cv-00047-SL
	:	
Plaintiff,	:	Judge Sara Lioi
	:	
v.	:	
	:	
NFLPA, et al.,	:	
	:	
Defendants.	:	
	:	

***Plaintiff David Lane Johnson's Refiled Motion to Vacate
Arbitration Award under the Federal Arbitration Act, 9 U.S.C. §§ 1-16***

(Oral Hearing Requested)

Pursuant to the Federal Arbitration Act ("FAA"), and in conjunction with Plaintiff David Lane Johnson's First Amended Complaint and Petition to Vacate Arbitration Award (Doc. No. 39), Johnson respectfully moves this Court to vacate the October 11, 2016 arbitration award (the "Award") issued by arbitrator James Carter upholding the imposition of a 10-game suspension and related penalties against him. The Award was the product of a fatally flawed and biased discipline appeal process, which by any reasonable measure, was a "sham."

The National Football League Policy on Performance-Enhancing Substances ("Policy"), under which the parties conducted Johnson's appeal, establishes specific provisions safeguarding Johnson's rights to fair treatment and adjudication. The National Football League Management Council, the National Football League (collectively referred to as the "NFL"), and the National Football League Players Association ("NFLPA"), with Carter's assistance, denied Johnson access to relevant documents and express procedural safeguards set forth in the Policy. Furthermore, Carter's conduct of the discovery process and the arbitration hearing defied basic

principles of impartiality. The NFL, the NFLPA, and Carter denied Johnson his right to “transparency” and the “fair system of adjudication” guaranteed by the Policy.

The Policy entitled Johnson to information relevant to his appeal of discipline. In violation of the Policy, the NFL denied him access to that information, and Carter endorsed the NFL’s improper denials. Carter’s misconduct also included pre-hearing rulings and rulings during the arbitration hearing that restricted Johnson’s access to relevant information in violation of the Policy’s terms. Carter even refused to enforce his own orders requiring the NFL to produce documents, which the NFL blatantly defied. Amplifying the prejudice to Johnson, the NFLPA, Johnson’s own union, also refused to provide him relevant information and documents.

Undermining Carter’s ability to hear Johnson’s appeal, Defendants failed to seat properly any arbitrators under the Policy and failed to maintain the requisite number of arbitrators required under the Policy. Further undermining Carter’s legitimacy as the arbitrator, subsequent to the erroneous Award, Johnson discovered that, in violation of the Policy and his inherent duty to disclose, Carter was affiliated with Defendants and his law firm performed significant services for the NFL and NFL clubs. Despite having a duty to make a conflict disclosure to Johnson, which duty Carter espouses in his instructional book regarding arbitration, Carter never did so.

In violation of the Policy, Carter exceeded his authority and manufactured restrictions on relevant discovery to which Johnson should have had access. Indeed, after denying Johnson’s specific requests for information regarding his testing history under the Policy as “irrelevant,” Carter admitted into the record the NFL’s submission of a summary of that same testing history over Johnson’s objections. In the Award, Carter then relied almost exclusively on the NFL’s summary of Johnson’s “irrelevant” testing history to deny a key element of Johnson’s appeal.

Exacerbating the NFL's and NFLPA's stonewalling, Carter's actions unfairly denied Johnson any meaningful ability to either make his case or rebut the NFL's initial burden.

On multiple occasions, Carter relied on unauthenticated, unsupported, or demonstrably false statements by the NFL, rather than evidence to render his decisions. He blithely accepted the NFL's statement that the NFL and NFLPA amended the Policy to eliminate a neutral review of Johnson's testing results by the "Chief Forensic Toxicologist" -- a substantive Policy right. Despite Johnson's repeated requests that Carter require the NFL to produce the purported agreement, Carter accepted the NFL's bald assertion as to its existence and its terms without ever setting eyes upon it, hearing sworn testimony about it, or requiring the NFL to produce it to Johnson. The NFLPA also failed to produce this claimed agreement to Johnson.

In addition, Carter failed to enforce the Policy's express and specific "burden shifting" paradigm on the NFL. Instead, he allowed the NFL to avoid meeting the Policy's mandatory evidentiary burden. By ignoring the Policy's burden-shifting paradigm, Carter exceeded his authority to Johnson's prejudice and the NFL's benefit. Carter's refusal to abide by the Policy's terms by denying Johnson access to plainly relevant information, while relying on the same information to deny Johnson's appeal, also confounded the Policy's commitment to a "fair system of adjudication."

The misconduct of Carter, the NFL, and NFLPA corrupted the Policy beyond repair. As set forth in Johnson's First Amended Complaint and Petition to Vacate Arbitration Award (Doc. No. 39) and the attached Memorandum in Support, the NFL's, the NFLPA's, and Carter's myriad of frauds, falsehoods, procedural and substantive Policy violations, and deceptions produced an erroneous Award ripe for vacatur. Johnson respectfully requests that this Court

vacate the Award under Sections 10(a)(1), (2), (3), and (4) of the FAA.¹ Johnson also requests that this Court grant him a hearing regarding the extensive grounds for vacating the Award and allow him discovery to demonstrate additional grounds for this Motion, particularly given that much of Johnson's Motion is based on Defendants' improper withholding of information and deceit, which Johnson could better illuminate if allowed discovery.

Upon receipt of relevant discovery, Johnson respectfully requests the right to supplement the grounds under the FAA for this Motion. Additionally, Johnson reserves the right to move later to vacate the Award based on grounds separate and apart from the FAA, including, but not limited to, the grounds set forth in his first two causes of action. *See* Doc. No. 39 at 1760-1763, ¶¶ 202-222.

Respectfully submitted,

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¹ This Motion relates back to the Motion to Vacate Arbitration Award Johnson filed on January 6, 2017.

CERTIFICATE OF SERVICE

The undersigned certifies that on March 17, 2017 the foregoing was filed using the Court's CM/ECF system. All parties and counsel of record will receive notice and service of this document through the Court's CM/ECF electronic filing system.

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